IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3407 OF 2007

Chandrashekhar Arjun Pillai
and anr. ...Petitioners

Versus

Ravindra Dattatray Kore ....Respondent

R.S.Datar for the petitioners.

CORAM: S.C.DHARMADHIKARI, J.

7th December, 2007.

P.C. :

1. Mr.Datar, appearing for the petitioners/original decree holders submits that the identical orders were impugned in the writ petitions filed before this court. The writ petitions challenge the orders of the executing court wrongly placing the burden on the decree holders to prove that the decree is valid and executable so also enforceable rather than calling upon the respondent obstructionist to show that he has any independent right, title and interest in the subject

immovable property.

2. Mr.Datar submits that these writ petitions have been allowed. The order under challenge in this writ petitions have been quashed and the issue have been recasted by this court.

3. None appears for the respondents although he is served. Upon the perusal of the petition and the annexures thereto, I am satisfied that the Learned Judge could not have passed an order while entertaining Exhibit-B on 14.3.2007. By the order of 14.3.2007, the learned Civil Judge Senior Division, Thane allowed Misc.Application No. 92 of 2005. The petitioners were directed to adduce their oral evidence first on the very same issue which has now been deleted by this court and in any event is recated. In the light of the orders passed by this court, copies of which are handed in by Mr.Datar it is evident that the Learned Judge could not have adopted the course suggested by the obstructionist. It was for the obstructionist to prove that the subject decree could not be enforced against him as he as a right, title and interest in the

subject immovable property independent that of the judgment debtor. In such circumstances, the order under challenge cannot be sustained. It is accordingly quashed and set aside. The leaned judge to recast the issue insofar as the present obstructionist also and the recasted Issue would read as under ;

> ." Whether the obstructionist/opponent proves that he has any independent right, title and interest in the flat of which he is in possession ?

4. Since the recasted issue places burden upon the Obstructionist, naturally he will have to first lead evidence. The learned judge to give opportunities to both sides in accordance with law and pass such order on the application in question as are permissible in law. Petition is allowed in the above terms. No costs.

sd/-

****